



**Request for City Council Committee Action
From the City Attorney's Office**

Date: December 7, 2011
To: Committee of the Whole
Referral to:

Subject: Agreement for transfer of administration of the Neighborhood Revitalization Program.

Recommendation: That the City Council authorize the proper City officials to enter into an agreement between the City of Minneapolis and the Neighborhood Revitalization Program Policy Board for the transfer of the administration of the Neighborhood Revitalization Program with said agreement to be substantially in the form of the proposed agreement attached to this Request for Council Action.

Previous Directives:

Prepared by:  Peter W. Ginder, Deputy City Attorney Phone: (612) 673-2478

Approved by: _____
Susan L. Segal
City Attorney

Presenter in Committee: Susan L. Segal, City Attorney

Financial Impact (Check those that apply)

- ☐ No financial impact (If checked, go directly to Background/Supporting Information).
- ☐ Action requires an appropriation increase to the _____ Capital Budget or _____ Operating Budget.
- ☐ Action provides increased revenue for appropriation increase.
- ☐ Action requires use of contingency or reserves.
- ☐ Business Plan: _____ Action is within the plan. _____ Action requires a change to plan.
- ☐ Other financial impact (Explain):
- ☐ Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact

Neighborhood Notification

Background/Supporting Information

In furtherance of Minn. Stat. §469.1831, as amended (the "NRP Law"), the City of Minneapolis and other governmental entities entered into a Joint Powers Agreement Neighborhood Revitalization Program (the "JPA") creating a Neighborhood Revitalization Program Policy Board. The JPA terminates pursuant to its terms on December 31, 2011. City staff believes it is appropriate to enter into an agreement to govern the transfer of the administration of the NRP. City staff and the NRP Director have had discussions regarding the proposed transfer of the administrative matters and have reached substantial agreement on the disposition of NRP assets and records and on the assumption of liability for certain claims against the NRP Board, its members, and NRP Director and employees. The parties have not reached an agreement on a proposed severance package for the NRP Director and employees. The attached proposed agreement reflects the agreement of staff on the transfer of the assets and records and the claims. The agreement also articulates the City's position on any severance package that would be available to NRP staff and Director. That severance policy provides that the NRP Director and employees would be entitled severance benefits that reflect those severance benefits that would be available to City staff or a department head in a similar position.

PWG:hnp

Attachment

AGREEMENT

By and Between

**THE CITY OF
MINNEAPOLIS, MINNESOTA**

and

**THE MINNEAPOLIS NEIGHBORHOOD REVITALIZATION PROGRAM POLICY
BOARD**

Dated as of: _____, 2011

**AGREEMENT
FOR
THE TRANSFER OF ADMINISTRATION OF THE NEIGHBORHOOD
REVITALIZATION PROGRAM**

THIS AGREEMENT FOR THE TRANSFER OF ADMINISTRATION OF THE NEIGHBORHOOD REVITALIZATION PROGRAM ("Agreement") is made and entered into as of the _____ day of _____, 2011, by and between the CITY OF MINNEAPOLIS, a Minnesota municipal corporation and city of the first class (the "City") and THE MINNEAPOLIS NEIGHBORHOOD REVITALIZATION PROGRAM POLICY BOARD, a joint powers entity under the laws of Minnesota (the "Board").

ARTICLE I. RECITALS

Section 1.1. Minnesota Statutes, Section 469.1831, as amended (the "NRP Law"), authorized the City, as "a city of the first class," to establish a neighborhood revitalization program.

Section 1.2. In reliance on the NRP Law, the City adopted ordinance 90-Or-157, 6-15-90, codified as Chapter 419, Minneapolis Code of Ordinances (as amended, the "NRP Ordinance") to establish the Neighborhood Revitalization Program (the "Program", or the "NRP").

Section 1.3. Pursuant to the NRP Law and the NRP Ordinance, the City and the other original constituent governmental entities (Hennepin County, Special School District No. 1, the Minneapolis Park and Recreation Board and the Minneapolis Library Board) entered into the *Joint Powers Agreement Neighborhood Revitalization Program* (the "JPA"), creating the Board and setting forth various policies and procedures for the governance of the NRP.

Section 1.4. The NRP has been funded over the years pursuant to the following authority:

a. Program money ("Program Money"), as the term is defined in Minnesota Statutes, Section 469.1781 ("Section 469.1781");

b. Tax increment and other revenues from the Common Project as set forth in Laws 1990, Chapter 604, Article VII, Section 29, as amended by Laws 1991, Chapter 291, Article X, Section 20 ("Chapter 604 Revenues"); and

c. Tax increment and other revenues from the Common Project to fulfill the City's obligations under the NRP Ordinance, less the legislatively-mandated property tax/local government aid reduction payments to Hennepin County (the "County") and Special School District No. 1 (the "School District").

Section 1.5. The JPA terminates pursuant to its terms on December 31, 2011.

Section 1.6. The City and the Board desire to enter into this Agreement to address the transfer of Program administration to the City (the “NRP Transition”).

Section 1.7. The City Council of the City and the Policy Board have each adopted resolutions authorizing execution of this Agreement.

Section 1.8. The Recitals in this Article I are fully incorporated into and made a part of this Agreement.

ARTICLE II. NRP TRANSFER OF ADMINISTRATION

Section 2.1. The City and the Board agree that subsequent to December 31, 2011, the balance of the funds as of that date that were reserved or obligated for NRP by the City of Minneapolis in Funds 01CNR, 01SNR and 42300 (the “NRP Reserve”) and any future Program Income funds, as defined in the NRP Ordinance, generated by neighborhoods or NRP investments and expenditures initiated prior to December 31, 2011, whether held by the City on behalf of the neighborhoods or by the neighborhoods and their contractors, must be spent pursuant to the NRP Law and NRP Ordinance, as may be amended from time to time.

Section 2.2. The City and the Board agree that the City will take all steps necessary to ensure that the Program is administered as required by the NRP Law and NRP Ordinance, as may be amended from time to time, subsequent to December 31, 2011, when the JPA expires.

Section 2.3. The City is taking necessary actions to re-create a multi-jurisdictional policy board to “review, modify where appropriate, and approve, in whole or part, the neighborhood action plans and forward its recommendation for final action to the governing bodies represented on the policy board.”, as required by the NRP Law. The constituent members and the legal form of this board shall be at the discretion of the City, but the new board shall have the composition and functions required by the NRP Law and NRP Ordinance, as may be amended from time to time.

ARTICLE III. NRP STAFF TRANSITION

Section 3.1. Subject to the Board adopting an amended severance policy and plan for staff employees, in accordance with the terms of this Article, the City shall agree to the following NRP staff transition. Subject to agreement by the appropriate bargaining unit(s), the City will offer existing NRP staff whose positions are eliminated as a result of the termination of the JPA the opportunity to be hired by the City by placing such staff in the City’s “Job Bank.” This does not include the NRP Director, who is an appointed official.

Section 3.2. Subject to agreement by the appropriate bargaining unit(s), final NRP seniority shall transfer with the employees as City and classifications seniority should the employees be hired through the Job Bank.

Section 3.3. Subject to agreement by the appropriate unit(s), employee vacation and sick leave accrual rates will transfer with the employees should the employees be hired through the Job Bank.

Section 3.4. Any NRP staff who are not offered a job by the City of Minneapolis through the Job Bank before January 1, 2012, shall be entitled, pursuant to Minneapolis Code of Ordinances Section 20.900(b), to the following with respect to COBRA continuance of medical and dental insurance:

- (a) If an NRP staff member elects to continue medical insurance through COBRA, the NRP shall pay one hundred (100) percent of the premium for medical insurance for the first six (6) months of COBRA continuance at the level of coverage, single or family, in effect on the December 31, 2011, and for the medical plan in effect on that date.
- (b) If an NRP staff member elects to continue dental insurance through COBRA, the NRP shall pay one hundred (100) percent of the premium for dental insurance for the first six (6) months of COBRA continuance at the level of coverage, single or family in effect on December 31, 2011, and the for the dental plan in effect on the date of the layoff.

Section 3.5. Subject to the Board adopting a severance policy and plan for the NRP Director in accordance with this section the NRP Director shall be entitled, pursuant to Minneapolis Code of Ordinances Section 20.455, to a lump sum payment equal to fifty (50) percent of the employees annual salary and conditioned upon the NRP Director's agreement to release the NRP and City from any and all causes of action or claims the Director may have against the City or NRP.

ARTICLE IV. ADMINISTRATIVE MATTERS

Section 4.1. The City shall appoint a city representative (the "City Representative") to coordinate all NRP Transition issues with the NRP Director. The NRP Director shall consult with the City Representative as necessary on any topic relating to the NRP Transition.

Section 4.2. Prior to execution of this Agreement, the NRP Director shall provide to the City Representative a written disclosure of all pending or threatened Claims involving the NRP Program, Board, or any Board member, employee or agent and arising out of or related in any way to the NRP. For purposes of this Agreement, "Claims" means any claim, demand, debt, obligation, liability, action, lawsuit, counterclaim, third party claim or cause of action of any kind, at law or in equity, whether arising by statute, common law or otherwise, whether for known or unknown injuries, damages, compensation, remediation, costs, expenses, or attorney's fees, including but not limited to any employment, labor and workers' compensation claims.

Section 4.3. The NRP Director shall terminate all existing professional services contracts as of December 31, 2011, unless the City agrees to take over the responsibility and liability for such contracts and the provider(s) consent to such substitution.

Section 4.4. The NRP Director shall make current NRP staff and consultants available to the City Representative to assist in the NRP Transition at no charge to the City through

December 31, 2011, or until such employee or consultant is terminated prior to December 31, 2011. Thereafter, in the event on-going assistance is necessary to implement NRP Transition activities, the City may employ such former NRP employee or consultant on such terms as the City and former NRP employee or consultant may agree.

ARTICLE V. DISPOSITION OF NRP ASSETS AND RECORDS

Section 5.1. The Board agrees to transfer ownership of all physical assets of the Program (i.e., office furniture, phones, work stations and related materials) to the City pursuant to Article IX, Section 3, of the JPA. These items will be left in the NRP offices located at 105 Fifth Avenue South, Suite 425 (the "NRP Office"). The Board has declared all computer equipment as surplus equipment, with no identifiable fair market value, and will make such equipment available at no charge to neighborhood organizations to assist them in conducting their activities.

In addition the Board hereby agrees to transfer, assign and convey its right, title and interest in the following money, receivables, investments, real property, contracts and obligations to the City of Minneapolis:

- a. Funds 01CNR, 01SNR and 42300;
- b. Contract files and materials that directly relate to those files in the file cabinets in the NRP Office;
- c. Historical documents such as Board minutes, approved plans and other program materials;
- d. PlanNEt NRP data management system, including Gavzy and iSystems contracts;
- e. NRP websites, domain names, passwords and electronic records;
- f. Sublease for the NRP Office; and
- g. D&O and CGL insurance policies.

The assets, rights and obligations described in this paragraph are hereinafter referred to as the "Assigned Assets, Rights and Obligations."

The Board hereby authorizes and directs the NRP Director to execute and deliver such documents and agreements as may be necessary to accomplish the transfer, assignment and conveyance of the Assigned Assets, Rights and Obligations to the City. The effective date of the transfers shall be January 1, 2012.

Section 5.2. The Board shall require its employees to remove all personal effects and materials from the NRP Office, and shall, among other actions, collect all office keys, loaned cell phones or other equipment and parking permits not later than December 31, 2011. Any items that are not personal effects will be turned over to the City Representative on or before December 31, 2011.

Section 5.3. The Board shall terminate all equipment leases and return such leased equipment to the respective lessor not later than December 31, 2011, unless the City agrees to take over the responsibility and liability for such leases, and the lessor(s) consent to such substitution. The City Representative and the NRP Director shall coordinate substitution of the City for the NRP Board for the identified leases.

Section 5.4. The NRP staff will vacate the NRP Office not later than midnight on December 31, 2011. Subsequent to the NRP vacating the NRP Office, the City shall be responsible for the lease and determining the use of the office space.

Section 5.5. The NRP staff shall organize its contract files and the materials that directly relate to those files in file cabinets in the NRP Office that are clearly marked as contract and plan files. Historic documents, such as Policy Board minutes, approved plans etc. will be retained in a labeled file cabinet in the NRP Office. Other Program related materials will be organized and stored in the NRP Office or at another safe and secure public access location approved by the City Representative.

Section 5.6 This Agreement will constitute an assignment of the above-described assets, except for the surplus computer equipment, and obligations to the City effective as of January 1, 2012 and the City hereby accepts and assumes the foregoing assets and obligations of the Board.

ARTICLE VI. MISCELLANEOUS

Section 6.1. Under the JPA and bylaws adopted pursuant to the JPA, the participating jurisdictions on the Board have agreed to assume liability for certain Claims against the Board, its members, and the NRP Director and employees. Effective January 1, 2012, the City shall assume liability for Claims against the Board, its members, and the NRP Director and employees which accrued as of December 31, 2011. To the extent such Claims are not first covered by current policies of insurance, the City shall be responsible for defense and indemnification for the Board, its members and the NRP Director and employees to the extent that such defense and indemnification would be required by Minnesota Statutes § 466.07, as it may be amended. To the extent the City assumes such liability, the liability shall include any deductibles required by such insurance coverage. The City Representative and the NRP Director shall coordinate extension of such policies of insurance March 31, 2013 if permitted by the insurance carrier(s), and substitution of the City for the NRP Board with respect to such policies.

Section 6.2 This Agreement is for the benefit of the signing parties only. There are no third party rights created by this Agreement and there are no third party beneficiaries entitled to the benefits of this Agreement. Nothing in this Agreement entitles or provides any basis for any person or entity that is not a party to this Agreement to bring or join any action or assert any claim, defense or counterclaim arising out of or in reliance upon any of the provisions herein or the acts or omissions of the City or the Board in the performance of the rights and obligations set forth herein.

Section 6.3 This Agreement may be executed in any number of counterparts, all of which shall constitute a single agreement, any one of which bearing signatures of all parties shall be deemed an original.

IN WITNESS WHEREOF, the City and the Board have entered into this Agreement as of the date first above written.

CITY OF MINNEAPOLIS

By _____
Finance Officer

Department Head Responsible
For Monitoring Contract:

Approved as to form:

Assistant City Attorney

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____ 2011, by Kevin Carpenter, Finance Officer of the City of Minneapolis, a Minnesota municipal corporation, on behalf of the municipal corporation.

Notary Public

(City Signature Page to Agreement for the Transfer of Administration of the Neighborhood Revitalization Program)

**MINNEAPOLIS NEIGHBORHOOD
REVITALIZATION PROGRAM POLICY
BOARD**

By _____
Director

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____ 2011, by Robert Miller, Director of the Minneapolis Neighborhood Revitalization Program Policy Board, a joint powers entity under Minnesota law, on behalf of the joint powers entity.

Notary Public

(Board Signature Page to Agreement for the Transfer of Administration of the Neighborhood Revitalization Program)